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Open Records Decision No. 643

Re: The construction of section 21.355 of the Education Code, as added by Senate Bill 1, Act of May 27, 1995, 74th Leg., R.S., ch. 260, § 1, 1995 Tex. Sess. Law Serv. 2207, 2277, which provides that "[a] document evaluating the performance of a teacher or administrator is confidential," and related questions (ORQ-7)

Dear Gentlemen:

The Round Rock Independent School District, the Mercedes Independent School District, the Sunray Independent School District, the Ector County Independent School District, and the Poolville Independent School District (collectively, "the school

districts”), which you represent, have asked whether some documents relating to certain school district employees are confidential under section 21.355 of the Education Code as incorporated into chapter 552 of the Government Code by section 552.101.¹

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. The Seventy-fourth Legislature made sweeping changes to the Education Code in Senate Bill 1. As part of those changes, section 21.355 was added to the Education Code. Section 21.355 provides, “A document evaluating the performance of a teacher or administrator is confidential.” When enacting section 21.355 of the Education Code, however, the legislature did not define *which* evaluations of teachers and administrators are confidential. Therefore, we must determine the scope of this confidentiality provision.

A statute should be construed as written and, if possible, the legislature’s intent should be ascertained from the language used in the statute. One should not look for extraneous matters to be used as a basis for reading into a statute an intention not expressed or intended to be expressed in the statute. *Government Personnel Mut. Life Ins. Co. v. Wear*, 151 Tex. 454, 460, 251 S.W.2d 525, 529 (1952). We must therefore first look to the plain meaning of section 21.355 and the subchapter in which it is found to determine what the legislature intended.

Subchapter H of chapter 21 of the Education Code addresses incentives and appraisals and discusses specific appraisal processes for teachers and administrators to be recommended by the commissioner of education or adopted by local boards of trustees. It has been suggested that the wording of the confidentiality provision found in section 21.355 encompasses more than these appraisal processes. See Educ. Code §§ 21.351 (teachers), .352 (same), .354 (administrators); cf. *id.* § 21.355. Because the language in section 21.355 is more inclusive than that used in the remainder of subchapter H, we conclude that the legislature intended to make confidential any document that evaluates the performance of a teacher or administrator. If the legislature had intended that only the written evaluations resulting from these specific appraisal processes be confidential, then presumably, the legislature would have used language to so indicate.

Previous opinions from this office held that evaluations of public employees are not typically excepted from disclosure. See Open Records Decision Nos. 615 (1993) (Gov’t Code § 552.111 does not extend to internal administrative or personnel matters), 473 (1987) at 3 (even highly subjective evaluations of public employees may not ordinarily be withheld under Gov’t Code § 552.102), 470 (1987) at 4 (public employee’s job performance does not generally constitute his private affairs), 464 (1987) at 2 (public has interest in evaluations of administrators at public universities). A statute is presumed

¹We will address your individual requests for rulings in informal open records letters.

to have been enacted by the legislature with complete knowledge of the existing law and with reference to it. *Acker v. Texas Water Comm'n*, 790 S.W.2d 299, 301 (Tex. 1990). Further, when the legislature amends a law, it is presumed that the legislature intended to change the law. *Buckner Glass & Mirror, Inc. v. T.A. Pritchard Co.*, 697 S.W.2d 712, 714 (Tex. App.—Corpus Christi 1985, no writ). Consequently, we are compelled to conclude that the legislature intended to change the law with regard to the availability of evaluations of teachers and administrators and did so by enacting section 21.355 of the Education Code.

We note that to be confidential under section 21.355 of the Education Code, the document must do more than mention or discuss the teacher or administrator. In construing a statute, if the legislature failed to define a word or phrase, its common and ordinary meaning should be applied and the word or phrase must be read in context. Gov't Code § 311.011(a); *State v. Public Util. Comm'n*, 883 S.W.2d 190, 200 (Tex. 1994); *R.R.E. v. Glenn*, 884 S.W.2d 189, 192 (Tex. App.—Fort Worth 1994, writ denied). The document must *evaluate* that employee. To “evaluate” is defined as “to determine or fix the value of,” “to determine the significance, worth, or condition of usu[ally] by careful appraisal and study.” MERRIAM WEBSTER’S COLLEGIATE DICTIONARY 401 (10th ed. 1993); see *Nueces County Water Control & Improvement Dist. No. 3 v. Texas Water Rights Comm’n*, 481 S.W.2d 924, 930 (Tex. Civ. App.—Austin 1972, writ ref’d n.r.e.) (“[t]o evaluate is to ascertain the value or amount of or to appraise carefully”). To “appraise” means “to set a value on: estimate the amount of,” “to evaluate the worth, significance, or status of; esp: to give an expert judgment of the value or merit of.” MERRIAM WEBSTER’S COLLEGIATE DICTIONARY 57 (10th ed. 1993). Unless the document at issue *evaluates*, as that term is commonly understood, the performance of a teacher or administrator, it is not confidential under section 21.355.

The final question we must address is which employees’ evaluations are made confidential by section 21.355; in other words, who is a “teacher” and who is an “administrator.” Neither term is defined in subchapter H. We note that subchapters C, D, and E, which set out the terms for probationary, continuing, and term contracts, provide definitions of “teacher.”² When a word or phrase is used in different parts of a statute, a clear meaning in one instance will be attached to it elsewhere. *L & M-Surco Mfg. v. Winn Tile Co.*, 580 S.W.2d 920, 926 (Tex. Civ. App.—Tyler 1979, writ dismissed w.o.j.). However, it appears that these definitions are overinclusive for purposes of subchapter H. These definitions include principals and counselors as teachers. In subchapter H, principals are administrators and not teachers. Educ. Code § 21.354(e). Counselors are treated separately for evaluation purposes. *Id.* § 21.356. Therefore, we conclude that

²“Teacher” is also defined in section 30.055(a), a provision dealing with the employment contracts of teachers for the Texas School for the Deaf. That definition is similar to those found in subchapters C, D, and E of chapter 21. Cf. Educ. Code §§ 21.101, .151, .201(1).

the definitions of "teacher" in subchapters C, D, and E of chapter 21 are inapplicable to subchapter H.

We must therefore look to the common meaning of these terms to ascertain what the legislature intended. Gov't Code § 311.011(a); *Public Util. Comm'n*, 883 S.W.2d at 200; *R.R.E.*, 884 S.W.2d at 192. A "teacher" is "one that teaches; *esp.* one whose occupation is to instruct." MERRIAM WEBSTER'S COLLEGIATE DICTIONARY 1209 (10th ed. 1993). To "instruct" is "to give knowledge to: TEACH, TRAIN." *Id.* at 606. Similarly, to "teach" is "to cause to know something," "to cause to know how," "to guide the studies of," "to impart the knowledge of," "to conduct instruction regularly in . . . school." *Id.* at 1209.

We note that to be employed by a school district as a teacher or administrator, one must hold "an appropriate certificate or permit issued as provided by Subchapter B" of chapter 21. Educ. Code § 21.003(a).³ Senate Bill 1 also provides for certain people to teach with school district teaching permits. *Id.* § 21.055. Therefore, we believe that the best definition of "teacher" for purposes of section 21.355 is a person who is required to hold and does in fact hold a teaching certificate under subchapter B of chapter 21 or a school district teaching permit under section 21.055 of the Education Code, and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* § 21.351(a)(2) (statute contemplates that teachers to be evaluated have students).⁴

To "administer" is "to manage or supervise the execution, use, or conduct of," "to perform the office of administrator." MERRIAM WEBSTER'S COLLEGIATE DICTIONARY 15 (10th ed. 1993) We note that, for purposes of subchapter H, a principal is included as an administrator. Educ. Code § 21.354(e). As we concluded with teachers, the definition of "administrator" in section 21.355 is a person who is required to hold and does in fact hold an administrator's certificate under subchapter B of chapter 21, and who is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation.

³Different classes of teaching and administrator permits are available. *See, e.g.*, 19 T.A.C. §§ 137.192 (elementary teacher), .193 (secondary teacher), .194 (all-level teacher), .195 (special education teacher), .304 (professional administrator).

⁴Section 63 of Senate Bill 1 provides that the new State Board for Educator Certification "shall issue to each person who holds a teacher's or administrator's certificate under Subchapter B, Chapter 13, Education Code, as that subchapter existed on January 1, 1995, the appropriate certificate under Subchapter B, Chapter 21, Education Code, as added by this Act." Act of May 27, 1995, 74th Leg., R.S., ch. 260, § 63(d), 1995 Tex. Sess. Law Serv. 2207, 2499. This section also provides that a person who holds a teacher's or administrator's certificate issued under subchapter B, chapter 13 of the Education Code, as that subchapter existed on January 1, 1995, may continue to practice under that certificate until the person is issued a certificate by the State Board for Educator Certification as provided by subsection (d) of section 63. *Id.* § 63(e), 1995 Tex. Sess. Law Serv. at 2500.

Section 21.003(a) of the Education Code provides:

(a) A person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aid, administrator, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by Subchapter B.

This subsection requires a different certificate for each of the listed occupations. For example, a teacher intern must hold a certificate different from the one an administrator is required to hold. Presumably, then, each of these occupations is distinct from the others listed in the subsection. We therefore conclude that teacher interns, teacher trainees, librarians, educational aids and counselors cannot be teachers or administrators for purposes of section 21.355.

S U M M A R Y

Section 21.355 of the Education Code makes confidential any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. The term "teacher" as used in section 21.355 means an individual who is required to hold and does hold a teaching certificate or school district teaching permit under subchapter B of chapter 21, and who is engaged in teaching at the time of the evaluation. An "administrator" is a person who is required to hold and does hold an administrator's certificate under subchapter B of chapter 21, and is performing the functions of an administrator at the time of the evaluation.

Yours very truly,

A handwritten signature in black ink that reads "Dan Morales". The signature is written in a cursive, flowing style.

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